

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NOS. 1999-323-C, 2000-265-C, 2001-447-C, 2013-216-C

ORDER NO. 2013-588

AUGUST 13, 2013

IN RE:	Application of Birch Communications,)	ORDER APPROVING
	Incorporated (f/k/a Access Integrated)	TRANSFER OF ASSETS
	Networks, Incorporated d/b/a Birch)	AND CUSTOMERS
	Communications) for a Certificate of Public)	
	Convenience and Necessity to Provide Local)	
	Exchange and Interexchange)	
	Telecommunications Services Statewide)	
)	
	Application Birch Telecom of the South,)	
	Incorporated d/b/a Birch Communications)	
	(f/k/a Birch Telecom of the South,)	
	Incorporated d/b/a Birch Telecom and d/b/a)	
	Birch) for a Certificate of Public)	
	Convenience and Necessity to Provide)	
	Resold and Facilities-Based Interexchange)	
	(Toll) and Local Exchange)	
	Telecommunications Services within the)	
	State of South Carolina)	
)	
	Application of Ernest Communications,)	
	Incorporated for a Certificate of Public)	
	Convenience and Necessity to Provide)	
	Resold Local Exchange Telecommunications)	
	Services)	
)	
	Joint Application of Birch Communications,)	
	Incorporated; Birch Telecom of the South,)	
	Incorporated d/b/a Birch Communications;)	
	and Ernest Communications, Incorporated)	
	for Approval to Transfer Assets)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Application of Birch Communications, Inc. (“BCI”); Birch Telecom of the South, Inc., doing business as Birch Communications (“Birch Telecom”) (collectively the “Company”); and Ernest Communications, Inc. (“Ernest”) (BCI, Birch Telecom and Ernest collectively, the “Joint Applicants”) to transfer Ernest’s telecommunications assets and South Carolina customer base to the Company pursuant to S.C. Code Ann. §§ 58-9-280, 58-9-300 and 58-9-310. The Joint Applicants requested that the Commission approve this Application as soon as possible, so that they can expeditiously close the transaction and meet critical business objectives. The Commission is of the opinion, and so finds, that the Application should be granted on the basis of the following findings and conclusions:

FINDINGS OF FACT

1. Ernest was authorized by the Commission to provide interexchange telecommunications services in South Carolina in Order No. 2002-90, Docket No. 2001-447-C.

2. BCI, formerly known as Access Integrated Networks, Inc., was granted authority to provide local and long distance telecommunications services in South Carolina by Order No. 1999-801, issued November 15, 1999, in Docket No. 1999-323-C. On December 18, 2008, the Commission issued Order No. 2008-824 approving Access Integrated Networks, Inc.’s, doing business as Birch Communications, request to change the name to “Birch Communications, Inc.”

3. Birch Telecom is authorized by the Commission to provide local exchange and interexchange telecommunications services in South Carolina by Order No. 2000-792, issued September 25, 2000, in Docket No. 2000-265-C. Birch Telecom is a wholly owned subsidiary of BCI.

4. The Company published notice of this matter in The Greenville News, The State, and The Post and Courier newspapers in conformity with the Commission's requirements providing notice and opportunity to any interested third parties to intervene in this matter. The Joint Applicants then moved for expedited review of the Joint Application and filed the verified testimony of Christopher J. Bunce, Senior Vice President and General Counsel for BCI and Birch Telecom. Consideration of this matter during the Commission agenda session on August 1, 2013, will constitute the "due hearing" required by S.C. Code Ann. Section 58-9-310 (Supp. 2012).

5. Mr. Bunce's testimony and the Joint Application described the proposed transaction. BCI entered into an Asset Purchase Agreement ("Agreement") to purchase Ernest's assets and customer base.

6. The assets to be purchased include customer accounts, accounts receivable, customer agreements and contracts, vendor agreements and contracts, and intellectual property. BCI will not assume any of Ernest's pre-closing liabilities or obligations. The proposed transfer will result in Birch Telecom becoming the service provider for Ernest's current South Carolina customers unless the customer selects another carrier. The rates, terms and conditions of the services received by these customers will not change for the immediate future. Following approval, Birch states

that it will file any necessary tariff revisions to incorporate Ernest's current services and rates into its existing tariffs on file with the Commission.

7. Since the Company will hold Ernest's assets and assume Ernest's telecommunications operations in South Carolina, Ernest will surrender its authorization and cancel its tariffs once Ernest determines that it no longer needs its certificate of public convenience and necessity for operational or billing purposes. However, before Ernest requests to cancel its certificate and tariffs, it must satisfy any remaining regulatory obligations for its South Carolina operations. These obligations include, but are not limited to, the Ernest's gross receipts obligations and any assessments for the South Carolina Universal Service Fund.

8. The Joint Applicants proposed to provide a joint notice of the transfer to Ernest customers at least thirty days prior to the transfer in accordance with the customer notice rules adopted by the Commission and the Federal Communications Commission. The Commission finds that the Joint Applicants' proposed plan to provide customer notice complies with the requirements of South Carolina law.

9. The Commission finds based upon the evidence in the record that it is in the public interest of the citizens of South Carolina to approve the transaction between the Company and Ernest as both BCI and Birch Telecom are established telecommunications service providers in South Carolina with significant industry knowledge, technical expertise, and financial strength. Birch Telecom will continue to offer the same high quality services to Ernest's customers in terms of the services that those customers currently receive.

CONCLUSIONS OF LAW

1. Based on our finding that no parties intervened in this matter and since this transaction will be seamless for Ernest's customers, we conclude that a formal hearing in this matter is not required.

2. We conclude that it is in the best interest of the public to approve the contemplated transfer of assets and customers.

3. We conclude that Ernest should be allowed to notify the Commission as soon as it determines that it no longer needs its certificate for operational or billing purposes. However, before Ernest requests to cancel its certificate and tariffs, it shall satisfy any remaining regulatory obligations for its South Carolina operations including, but not limited to, its gross receipts obligations and any assessments for the South Carolina Universal Service Fund.

4. S.C. Code Ann. Section 58-3-230 governs the unauthorized change of a utility service provider. We conclude that the proposed customer notice and the plan for providing notice will satisfy S.C. Code Ann Section 58-3-230.

IT IS THEREFORE ORDERED

1. That the Joint Application is granted, and no formal hearing is required.
2. The Joint Application for authority to transfer the assets and customers of Ernest to the Company is approved.
3. Specific to the facts of this Order and to the extent that the Commission has jurisdiction, we hold that the proposed customer notice will satisfy the South Carolina anti-slamming provisions.

4. After Ernest notifies the Commission that operational and billing functions are complete and its obligations to South Carolina are complete, Ernest's certificate and tariffs will be cancelled.

5. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


G. O'Neal Hamilton, Chairman

ATTEST:


Nikiya Hall, Vice Chairman

(SEAL)